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In re Application of
SOLED, Stuart L., et al.
Application No.: 09/869,990
PCT No.: PCT/US00/01004
Int. Filing Date: 14 January 2000
Priority Date: 15 January 1999
Attorney Docket No.: JHT-0004
For: HYDROCRACKING PROCESS
USING BULK GROUP VIII/GROUP
VIB CATALYSTS

DECISION ON

PETITION

UNDER 37 CFR 1.137(b) AND

REQUEST

UNDER 37 CFR 1.42

Applicant's "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" filed in the United States Patent and Trademark Office on 15 November 2001 is GRANTED. Additionally, the declaration submitted by applicant contains an indication that an inventor is deceased. This has been construed as a request for status under 37 CFR 1.42.

BACKGROUND

On 14 January 2000, applicant filed international application PCT/US00/01004, which claimed a priority date of 15 January 1999. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 20 July 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 14 August 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 15 July 2001.

On 09 July 2001, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, a request to charge deposit account no. 05-1330 the amount of \$1342 to cover the fees.

On 13 July 2001, a charge was attempted on the deposit account no. 05-1330, but the account contained insufficient funds.

On 07 September 2001, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) noting that the application went abandoned as to the United States under 37 CFR 1.495 for failure to pay the basic national fee by thirty months.

On 05 October 2001, applicants submitted, *inter alia*, a transmittal letter and a declaration pursuant to 35 U.S.C. §371(c)(4).

On 15 November 2001, applicants submitted the instant petition.

On 05 December 2001, the Office mailed Communication indicating that the application remained abandoned, in response to the 05 October 2001 submission, but prior to the instant petition being matched with the application.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a statement that the entire delay in filing the required reply from the due date for reply until the filing of a grantable petition was unintentional, (2) a proposed response, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) by a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

Applicant states "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional," as required by 37 CFR 1.137(b)(3). The appropriate basic national fee, and petition fee, processing fee for late filing of the oath or declaration have been submitted. A terminal disclosure is not required. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

Additionally, the declaration submitted on 05 October 2001 contained an indication that an inventor, William L. Schuette, was deceased. This indication has been construed as a request for status under 37 CFR 1.42. The declaration is signed by five inventors and the executrix of Mr. Schuette's estate, Darlene Schuette. The declaration lists the citizenship, address and residence of each of the inventors and of the legal representative and identifies Ms. Schuette as the executrix of Mr. Schuette's estate. As such, the declaration complies with 37 CFR 1.42 and 37 CFR 1.497(a)-(b).

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **GRANTED** as to the National Stage in the United States of America. The request for status under 37 CFR 1.42 is **GRANTED**.

The application has an international filing date of 14 January 2000 under 35 U.S.C. §363 and a date of **15 November 2001** under 35 U.S.C. §371. This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing.

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